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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/024,493

Applicant(s)

JOHNSON, BETSY

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restriction***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: the species of Figures 1-2, the species of Figures 3-4 and the species of Figures 5-6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-7, 10-14, 17, 19-25 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Scott F. Yarnell on 2-20-03 a provisional election was made with traverse to prosecute the invention of the species of Figures 1-2, claims 1-17 and 19-25. Affirmation of this election must be made by applicant in replying to this Office action. Claim 18 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

4. The prior art cited in the specification has been noted but will not appear on the front of a patent, if any, unless cited on a PTO-892 or -1449 which accompanies this action, since such citation(s) do not comply with 37 CFR 1.56, 1.97 and 1.98.

5. Incorporation of material by reference to U.S. Patents has been noted in this application. Incorporation of essential, i.e. claimed subject matter, by reference to a patent which itself incorporates essential material by reference is improper. Applicant should carefully review the incorporations in the instant application to ensure their propriety.

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6. The abstract of the disclosure is objected to because language which can be inferred, i.e. "are disclosed", legal terminology, i.e. "comprise", and language referring to purported merits, i.e. "novel", "superior", should be avoided. Correction is required. See MPEP § 608.01(b).

7. The use of the trademark velcro(page 1, line 19) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be in all capital letters or accompanied by a symbol.

8. The drawings are objected to because in Figure 1, where are 40 and 50 shown as described at page 22, lines 11-13? Also the lines from 8 and 10 should be dashed to denote underlying structure. The lines from 4a and 4b should be arrows. The straight lines of 4a and 4b denoting elastics should be dashed to denote underlying structure. In Figure 3, see discussion of Figure 1. Also the dark lines inside 4a and 4b elastics should be deleted. The lines from 2a and 2b should be arrows. In Figure 5, see discussion of Figure 1 except for 50 and the showing of 4a and 4b as dashed lines. In Figure 6, should the dotted line over 4 be deleted? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

9. The disclosure is objected to because of the following informalities: on page 25, line 10, "1" should be --3--. It is noted that regardless of such change the description is inconsistent with

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the description at page 24, lines 10-12. On page 27, line 9, "(not....)" should be deleted. On page 22, lines 12-13, the backsheet is described as substantially impermeable. On page 30, lines 5-10 such backsheet is described as a nonwoven layer of fibers, i.e. porous. How is the nonwoven layer made substantially impermeable?

Appropriate correction is required.

10. It is noted that the page numbers of the application were changed by whiting out and renumbering. It is presumed that although such changes are not dated and initialed that Applicant was aware of such at the time of signing the declaration.

11. Claims 1-17 and 19-25 are objected to because of the following informalities: In claim 1, line 6, "each of" should be deleted. On line 7, "the"(1st) should be --respective--. On line 10, "the"(1st and 3rd) should be --a-- and after "least", --equal to-- should be inserted. On line 11, "the"(last) should be --a--. On line 12, "the...each of" should be--innermost portions--. In claim 12, line 2, "1" should be deleted. In claim 14, line 2, "the"(1st) should be deleted and "the"(2nd) should be --a--. In claim 15, line 2, after "a", --respective-- should be inserted. In claim 16, line 2, "the"(1st) should be --a--. The last three lines of Claim 17 should be amended as set forth with regard to similar language in claim 1. Also on line 12, "the"(1st) should be deleted. In claim 19, line 1, after "17,", --wherein-- should be inserted and on line 2, "comprising" should be --comprises--. In claim 21, line 1, "article" should be --garment. Also the discussion of claim 14 applies here to similar language. In regard to claim 22, last section see discussion of claim 1 which applies to similar language here. Also, on lines 8-9, "each..between" should be --a

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respective leg opening and formed by--. In regard to claim 25, see discussion of claims 14 and 21 supra. Appropriate correction is required.

12. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 20, a positive structural antecedent basis for "the fibers" should be defined.

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-17 and 19-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobrin.

Claims 1, 8-11, 15-17 and 22: see Dobrin at Figures, col. 4, lines 3-7, col. 3, line 14, col. 11, lines 37-57, and thereby Lawson '278, e.g., Figures, Dobrin at col. 5, lines 24-57, col. 6, line 50 -col. 8, line 12.

Claims 2-7, 13, 19 and 23-24: see cited portions above, especially col. 7, lines 37-42 and col. 5, lines 51-58, and thereby Reising et al '344 at col. 5, lines 36-64(Note 1 denier is 1.1 dtex).

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Claim 12: see col. 7, line 20, i.e. "cloth like feel". The terminology "soft" is a relative term and therefore materials which have a cloth-like feel are deemed to be "soft".

Claims 14, 21 and 25: see col. 9, lines 36-40. Since the Dobrin device includes all the claimed structure, the properties, functions and capabilities of such structure are also deemed inherent in the same structure of Dobrin, see MPEP 2112. 01

15. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

*K.M. Reichle*  
KAREN REICHEL  
PATENT EXAMINER

KMR

February 24, 2003